

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 1709 – SB 1999

March 26, 2018

SUMMARY OF ORIGINAL BILL: Enhances classifications of the sale, manufacture, distribution, and possession with intent of more than 15 grams of any substance containing fentanyl to a Class B felony and more than 150 grams of any substance containing fentanyl to a Class A felony.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures -- \$12,429,000 Incarceration*

SUMMARY OF AMENDMENT (015493): Deletes and rewrites the proposed legislation to require all convictions relating to controlled substances containing fentanyl be punished one classification higher.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Increase State Expenditures – \$565,200 Incarceration*

Assumptions for the bill as amended:

- Tennessee Code Annotated § 39-17-417 prohibits the manufacture, delivery, selling, or possession with intent of controlled substances.
- Manufacturing, delivering, selling, or possessing fentanyl is a class C felony in any amount up to 200 grams, a class B felony in any amount 200 grams to 2,000 grams and a class A felony in any amount 2,000 grams or more.

Controlled Substances Containing Fentanyl

- The proposed legislation enhances the manufacturing, delivering, selling, or possessing with intent of substances containing fentanyl one classification higher.
- The most commonly known substances to be laced with fentanyl are heroin, a Schedule I controlled substance, and cocaine and counterfeit prescription opioids, which are Schedule II controlled substances.

Cocaine and Counterfeit Prescription Opioids Containing Fentanyl

- Statistics from the DOC show an average of 538 admissions each year for manufacturing, delivering, selling, or possessing with intent for a schedule II controlled substance. It is assumed that 50 percent ($538 \times 0.75 = 269$ admissions) of these admissions are attributable to unlawful possession of cocaine or opiates.
- Of these 269 admissions, it is assumed that five percent, or 13 admissions ($269 \times .05 = 13.45$), will have been convicted of possession of cocaine or counterfeit prescription opioids that contained fentanyl.
- The average time served for class C felony manufacturing, delivering, selling, or possessing with intent of a schedule II controlled substance is 2.9 years; the average time served for class B felony for manufacturing, delivering, selling, or possessing with intent of a schedule II controlled substance is 5.14 years. The proposed legislation will result in each offender serving an additional 2.24 years ($5.14 - 2.9$)
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will account for two ($13 \times .1178$) additional admissions for a total of 15 ($13 + 2$).
- According to the DOC, 41.7 percent of offenders will re-offend within three years of their release. A recidivism discount of 41.7 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this legislation. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law ($15 \text{ offenders} \times .417 = 6 \text{ offenders}$).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on nine offenders ($15 \text{ offenders} - 6 \text{ recidivism discount}$) serving an additional 2.24 years (818.16 days) at a cost of \$58,155 ($\$71.08 \times 818.16 \text{ days}$) per offender. The cost for nine offenders is \$523,395 ($\$58,155 \times 9$).

Heroin Containing Fentanyl

- The proposed legislation enhances the penalty for manufacturing, delivering, selling, or possessing heroin that contains fentanyl from a class B felony to a class A felony.
- Statistics from the DOC show an average of 108 admissions each year for class B felony manufacturing, delivering, selling, or possessing with intent of a schedule I controlled substance. It is assumed that 15 percent, or 16 admissions ($108 \times 0.15 = 16.2$ admissions), are attributable to heroin.
- Of these 16 admissions, it is assumed that five percent, or one admission ($16 \times .05 = 0.8$), will have been convicted of possession of heroin that contained fentanyl.
- The average time served for class B felony manufacturing, delivering, selling, or possessing with intent of a schedule II controlled substance is 5.14 years; the average time served for a class A felony for manufacturing, delivering, selling, or possessing with intent of a schedule I controlled substance 6.75 years. The proposed legislation will result in each offender serving an additional 1.61 years ($6.75 - 5.14$).
- Population growth and recidivism will not affect the fiscal impact of the proposed legislation for this group of offenders.

- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender serving an additional 1.61 years (588.05 days) at a cost of \$41,799 (\$71.08 x 588.05 days).

Total State Incarceration Costs

- The total increase in state incarceration costs are estimated to be \$565,194 (\$523,395 + 41,799).

*Tennessee Code Annotated, Section 9-4-210, requires that: *For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista M. Lee, Executive Director

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